Calendar No. 262

99TH CONGRESS
1st Session

SENATE

REPORT
99-119

PROVIDING FOR THE USE AND DISTRIBUTION OF FUNDS APPROPRIATED IN SATISFACTION OF JUDGMENTS AWARDED TO THE SAGINAW CHIPPEWA TRIBE OF MICHIGAN IN DOCKETS NUMBERED 57, 59, AND 13E OF THE INDIAN CLAIMS COMMISSION AND DOCKET NUMBER 13F OF THE U.S. CLAIMS COURT, AND FOR OTHER PURPOSES

JULY 30 (legislative day, JULY 16), 1985.—Ordered to be printed

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Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1106]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1106) to provide for the use and distribution of funds appropriated in satisfaction of judgments awarded to the Saginaw Chippewa Tribe of Michigan in dockets numbered 57, 59, and 13E of Indian Claims Commission and docket numbered 13F of the U.S. Claims Court, and for other purposes, having considered the same, reports favorably thereon with amendment(s) and recommends that the bill (as amended) do pass.

The amendments are as follows:

On page 2, beginning with line 25, strike out "is hereby authorized to" and insert in lieu thereof "shall".

On page 3, strike out lines 16 through 24 and insert in lieu thereof the following:

> (b)(1) The principal of the Investment Fund shall be used exclusively for investments or expenditures which the Tribal Council determines—
>
> (A) are reasonably related to—
>
> (i) economic development beneficial to the tribe, or
>
> (ii) the development of tribal resources, or
>
> (B) are otherwise financially beneficial to the tribe.

On page 4, between lines 5 and 6, insert the following:

> (3) None of the income of the Investment Fund may be distributed or expended before the date that is 18 months

S413-4

after the date on which the amendments to the constitution of the tribe referred to in section 4(a) are adopted and ratified by the qualified voting members of the tribe (within the meaning of such constitution).

On page 4, strike out lines 22 through 26 and insert in lieu thereof the following:

SEC. 4. (a) Notwithstanding any other provision of law, the Tribal Council may call a tribal election and, pursuant to such election, the tribe may adopt (without the approval of the Secretary) any amendments to the constitution of the tribe which were approved by the Tribal Council on April 15, 1985, in resolution I and O–03–85.

On page 9, line 15, strike out "became" and insert in lieu thereof "become".

On page 9, after line 16, add the following:

NONDISCRIMINATION

SEC. 9. (a) Any distribution or expenditure of the income of the Investment Fund, and any program or activity funded, in whole or in part, by the principal or income of the Investment Fund, shall not discriminate against—

(1) individuals who become members of the tribe after the date on which the amendments to the constitution of the tribe referred to in section 4(a) are adopted and ratified by the qualified voting members of the tribe (within the meaning of such constitution), or

(2) members of the tribe who do not reside on the reservation of the tribe.

(b) Any—

(1) expenditure for any improvement on the reservation of the tribe that can be enjoyed by all members of the tribe, or

(2) program or activity conducted only on the reservation of the tribe in which any member of the tribe can participate.

shall not be construed to be discriminatory for purposes of subsection (a) merely because the benefits of such improvement, program, or activity are more readily available to members of the tribe who reside on the reservation of the tribe.

PURPOSE

S. 1105 is a bill to provide for the use and distribution of funds awarded the Saginaw, Swan Creek and Black River Bands of Chippewa Indians by the Indian Claims Commission in Dockets No. 59 and 13E, and by the Claims Court in Docket No. 13F. These funds now total in excess of $7 million. S. 1106 would restrict the use of these funds to a tribal investment program. No funds would be distributed to any descendants of the ancestral bands, and only future earnings would be distributed to tribal members.

BACKGROUND AND NEED

Between August 1, 1973, and January 19, 1979, some $12.4 million was awarded the Saginaw, Swan Creek and Black River Bands of Chippewa Indians in four separate dockets of the Indian Claims Commission or the Claims Court. Three of these dockets (59, 13E and 13F) are provided for under S. 1106. Funds from a fourth docket (Docket No. 57) were distributed pursuant to an Interior Department distribution plan submitted to the Congress on August 15, 1977, as required by the Indian Judgment Fund Distribution Act of 1973.

The 1977 distribution plan distributed the funds from Docket No. 57 among all descendants from the ancestral tribal entity as it existed in 1819. Twenty percent of the funds apportioned to those descendants who were members of the Saginaw Chippewa Indian Tribe were reserved for tribal program purposes. The total award in Docket No. 57 was $8.1 million which grew to $16.7 million prior to distribution. The funds were distributed as follows: $13.1 million to the descendancy group ($4.060.00 per capita); $2.8 million to members of the Saginaw Chippewa Tribe ($2,894.00 per capital); and 20% retained for tribal program purposes ($723,605).

S. 1106 addresses the three undistributed dockets (Dockets 59, 13E and 13F). The funds in these three dockets now total in excess of $7 million. S. 1106 does not provide for any per capita distribution. It would establish an investment fund on behalf of the Saginaw Chippewa Indian Tribe which will be under the management of the Tribe subject to certain restrictions. Distribution of income from the tribal investments will be limited to the tribal members only. The descendancy group (those who are not members of the tribe) will be excluded from any benefits or participation in the funds from Dockets No. 59, 13E and 13F.

The Dockets No. 59 award ($5.0 million) is for lands ceded under a treaty of 1807; Docket No. 13E ($926,753) for land ceded under an 1805 treaty; and Docket No. 13F ($258,820) for lands ceded in 1817.

History of Saginaw, Swan Creek and Black River Groups

In various treaty dealings in the early 19th century, the United States treated separately with Saginaw, Swan Creek and Black River Chippewa groups. A series of treaties were negotiated which anticipated that the Swan Creek and Black River Bands would remove out of what is now the State of Michigan. In 1839 a small portion of the Swan Creek and Black River Chippewas did remove to Kansas. In 1868 the Kansas Chippewa population was recorded as 45 members; by 1900 the number had fallen to 22. By Act of June 19, 1897 patents in fee were issued to the Chippewa and Munsee Indians in Kansas. They no longer exist as a Tribe in that State.

By Treaty of August 2, 1855, the remnants of the Swan Creek and Black River Bands that had not removed west joined with the Saginaw Chippewas and the United States agreed to set aside reservations for the Tribe consisting of six townships in Isabella County, Michigan, and certain townships on the Saginaw Bay. The Saginaw Bay reservation was later released to the United States by treaty of October 18, 1864, and the Indians located there were per-

mitted to select in lieu allotments on the Isabella Reservation. In the latter part of the 19th century and early 20th century fee patents were issued to the Indians for allotted lands within the Isabella Reservation and by 1934 the trust land base consisted of a handful of trust allotments.

In 1937 the Saginaw Chippewa Indian Tribe organized under the provisions of the Indian Reorganization Act of 1934. The base membership of the Tribe includes all persons named on certain allotment rolls of 1883, 1885 and 1891, and their descendants and all other Indians entitled to reside on the Isabella Reservation, provided such persons resided on the reservation at the time the Constitution was adopted. Future born children were required to meet a one-quarter degree Indian blood requirement.

In 1938 the Tribe adopted an ordinance establishing rules for adoption into the Tribe. It also included rules for adoption of the Saginaw Chippewa Indians residing in Saginaw, Michigan, where lands were purchased by Interior for the Saginaw, Swan Creek, and Black River Chippewas living in that area.

There are at present approximately 891 members of the Saginaw Chippewa Indian Tribe and approximately 3,243 persons who might claim participation in the judgment on the basis of descendancy. If the same per capita distribution formula is used for distribution of the funds remaining in Dockets 59, 13E and 13F as was used for distribution of the funds in Docket No. 57, each distributee would receive approximately $2,000.00 per capita. Funds retained for tribal program purposes would be reduced from the proposed $7 million to approximately $300,000.00.

LEGISLATIVE HISTORY

S. 1106 was introduced by Senator Riegle for himself and Senator Levin on May 8, 1985. The Select Committee on Indian Affairs held a hearing on the bill on July 10, 1985. A companion bill, H.R. 2983, was introduced in the House of Representatives on July 11, 1985. The Select Committee on Indian Affairs held a business meeting on July 24, 1985, at which time it ordered S. 1106 reported favorably, with amendments.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on July 24, 1985, with a quorum present recommends by a unanimous vote that the Senate pass S. 1106 as amended. The amendments, which appear on page 1 of this report, are explained in the section-by-section analysis that follows.

SECTION-BY-SECTION ANALYSIS AND EXPLANATION OF COMMITTEE AMENDMENTS

Section 1. Cites the title of this Act and provides the definitions of terms to be used for the purposes of this Act.

Section 2. Provides for the abrogation of the prior plan approved on October 19, 1973, or any plan prepared or regulation promulgated by the Secretary pursuant to such Act. Further, that any interest or investment income accrued or accruing (on or before the date

of the transfer pursuant to section (4)) on the amount of such judgments shall be distributed and used in the manner provided in this Act.

Section 3. Requires the establishment of a fund to be known as the "Investment Fund," the principal of which shall consist of the funds transferred by the Secretary to the Tribal Council pursuant to section 5(a); the amounts required to be included in principal under subsection (c) or section 8(c), and such amounts of the income of the investment Fund which the Tribal Council may elect to retain and add to the principal. This section further authorizes the Fund to be held in trust by the Tribal Council for the benefit of the tribe and administered in accordance with this Act; no part of the principal of the Investment Fund may be distributed in the form of per capita payments to the members of the tribe or used or expended for purposes other than investment or economic development projects or programs. This section also provides that the Investment fund be maintained as a separate book account and audited at least once during each fiscal year. Also, during the first 10 years after the beginning of the Investment Fund, at least 10 percent of the income earned on the Investment Fund is to be retained in the fund and become part of the principal of the fund. No part of the income of the Investment Fund is to be distributed and expended before 18 months after the tribe adopts and ratifies the amendments of the tribal constitution referred to in section 4.

Section 4. This provision allows the Tribal Council to call a tribal election and pursuant to such election, the tribe may adopt, without the approval of the Secretary, any amendments to the constitution of the tribe which were approved by the Tribal Council on April 15, 1985, in resolution L and O -03-85. Amendments to the constitution, other than those approved pursuant to resolution L and O -03-85 must be adopted in accordance with the provisions of such constitution and applicable law. The adoption of any amendment referred to in resolution L and O -03-85 shall take effect when such amendment is ratified by the qualfied voting members of the tribe. The bill, as introduced, allowed the tribe, without the approval of the Secretary, to adopt any amendments. The amendment requires that a tribal election first be called, then based upon the outcome of such election, the tribe can adopt such amendments, without the approval of the Secretary. The proposed amendments to the constitution of the Saginaw Chippewa Tribe are a part of the record of the Committee hearing held on July 10, 1985. These amendments provide among other things for expansion of the membership of the tribe to include persons born off the reservation who are of Saginaw Chippewa Indian descent and are at least ¼ Indian blood. The amendments will also restructure the present tribal council to provide an additional council member from the Saganing district and an additional council member for membership living outside the reservation and not within the Saganing district. The majority of the council will continue to be composed of persons elected from the Isabella reservation district.

The Committee notes that there is ample precedent for such weighted representation on tribal councils. It is not uncommon for tribal constitutions to limit the franchise to members actually residing on a reservation or limit the holding of office to persons re-

siding on the reservation. Weighted representation for different districts within a reservation based on historical decisions has also been employed. The amendments proposed for the Saginaw Chippewa tribe assure the residents of their capacity to govern tribal affairs on the reservation while assuring those members residing off-reservation of their right to be heard in council deliberations and in the management of the tribal investment funds.

Section 5. Provides that the Secretary shall transfer funds to the Tribal Council for deposit in the Fund before the end of the sixty-day period beginning on the date the Secretary receives notice of the adoption of a resolution by the Tribe which would establish the Fund. Before such transfer can occur, the amendments to the constitution of the tribe referred to in section 4(a) must be adopted and ratified by the qualifying voting members of the tribe. Additionally, the section provides that the approval of the Secretary for any payment or distribution from the principal or income of the Investment Fund, after the transfer of funds pursuant to subsection (a), shall not be required and the Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the principal or income of the Investment Fund. The Secretary is authorized to take whatever action is appropriate and necessary to enforce the requirements of this Act.

Section 6. Provides that any payment or distribution from the Fund in accordance with section 3 shall not be included in gross income of the payee or distributee where the payee or distributee is an enrolled member of the Tribe, for purposes of any Federal or State income tax. Likewise, payments or distributions from the Fund, or the availability of any amount for payment or distribution from the Fund, may not be considered as income or resources as a basis for denying or reducing assistance under the Social Security Act, or any other Federal financial assistance program.

Section 7. Provides that the tribe may execute limited waivers of the sovereign immunity of the tribe, and consent to the civil jurisdiction of the courts of the State of Michigan with regard to the use of security for indebtedness of certain portions of the Investment Fund. The section specifies the funds that can be used as security and the conditions under which sovereign immunity can be waived.

Section 8. Provides that the Secretary shall transfer to the Tribal Council all or any portion of the undistributed funds appropriated in satisfaction of the judgment awarded the tribe in docket 57 of the Indian Claims Commission and that such funds will be subject to the same restrictions and conditions applicable to the Investment Fund.

Section 9. This section clarifies that any distribution or expenditure of the income of the Investment Fund, and any program or activity funded, in whole or in part, by the principal or income of the Investment Fund, shall not discriminate against individuals who become members of the tribe pursuant to the amendments to the tribal constitution or members of the tribe who do not reside on the reservation of the tribe. In addition, any expenditure for any improvement on the reservation of the tribe that can be enjoyed by all members of the tribe, or any program or activity conducted only on the reservation in which any member of the tribe

can participate, is not to be considered discriminatory for purposes of the Act merely because the benefits of such improvement, program, or activity are more available and accessible to members of the tribe who do reside on the reservation of the tribe.

COST AND BUDGETARY CONSIDERATION

The cost estimates for S. 1106 as provided by the Congressional Budget Office are outlined below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 25, 1985.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs; U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1106, a bill to provide for the use and distribution of funds appropriated in satisfaction of judgments awarded to the Saginaw Chippewa Tribe of Michigan in dockets numbered 57, 59, and 13E of the Indian Claims Commission and docket numbered 13F of the United States Court of Claims, and for other purposes, as amended and ordered reported by the Senate Select Committee on Indian Affairs, July 24, 1985.

We expect that no additional costs to the federal government or to state or local governments would be incurred as the result of enactment of this legislation. The bill would specify the manner of the use and distribution of funds previously awarded to the tribe.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the provisions of the bill.

The Committee believes that S. 1106 will have minimal regulatory and paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee did not receive a legislative report from the U.S. Department of the Interior giving the Administration's veiws of S. 1106. The following testimony was presented at the Committee's July 17, 1985 hearing.

STATEMENT OF HAZEL E. ELBERT, ACTING DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, JULY 10, 1985

Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department of the Interi-

or on S. 1106, "To provide for the use and distribution of funds appropriated in satisfaction of judgments awarded to the Saginaw Chippewa Tribe of Michigan in Dockets Numbered 57, 59, and 13-E of the Indian Claims Commission and Docket Numbered 13-F of the United States Claims Court, and for other purposes."

We oppose the bill as drafted and are offering a substitute for your consideration.

S. 1106 provides for the distribution of funds appropriated to pay judgments awarded to the Saginaw, Swan Creek and Black River Chippewas in Dockets 59, 13-F, and 13-E and the balance of undistributed funds from Docket 57. The bill authorized the Secretary of the Interior to transfer these funds to the Saginaw Chippewa Tribe of Michigan. The Saginaw Tribal Council would establish a fund known as the "Principal Investment Fund" and tribal programs would be administered from this fund. Upon the transfer of the funds the Secretary would have no further trust responsibility for the investment, supervision, administration, or expenditure of the funds. None of the funds could be used for per capita payments by the tribe. The bill also provides for the adoption of constitutional amendments regarding tribal membership without the approval of the Secretary.

On June 22, 1978, the Indian Claims Commission awarded $3,479,308.00 in Docket 59 to the Saginaw, Swan Creek and Black River Chippewas as compensation for land in Michigan and Ohio ceded under the treaty of November 17, 1807 (7 Stat. 105). The funds were appropriated on September 15, 1978.

On August 17, 1978, the Indian Claims Commission awarded $563,624.21 in Docket 13-E to the Saginaw, Swan Creek, and Black River Chippewas as compensation for land in Ohio ceded under the Treaty of July 4, 1805 (7 Stat. 87). The funds were appropriated on January 19, 1979.

On January 19, 1979, the U.S. Court of Claims awarded $258,820.80 in Docket 13-F to the Saginaw, Swan Creek and Black River Chippewas as compensation for land in Ohio and Michigan ceded under the Treaty of September 29, 1817 (7 Stat. 178). The funds were appropriated on March 2, 1979.

The 1977 Secretarial distribution plan distributed the funds from Docket No. 57 among all descendants. Twenty percent of the funds apportioned to those descendants who were members of the tribe were reserved for tribal program purposes. This amount was approximately $724,000. The distribution plan authorizes the Secretary to approve a plan for expenditure of these funds. S. 1106 provides that these funds be included in the proposed principal investment fund.

The Saginaw, Swan Creek, and Black River Bands of Chippewa Indians were Michigan Chippewas. An historic analysis of the three groups is found in the Results of Research Report, signed October 3, 1983, which was provided to the Committee in connection with the hearings on S. 2823 in the 98th Congress. Briefly, by the Treaty of May 9, 1836 (7 Stat. 503) the United States treated separately with the Swan Creek and Black River Chippewa Bands. Under this treaty, the two Bands were to move west of the Mississippi River, but only a portion actually moved. The following year, by the treaty of January 14, 1837 (7 Stat. 528) the Saginaw Band

agreed to relinquish land in Michigan to the United States in exchange for land outside of Michigan. Later, the Band members declined to leave the State and entered into other treaties involving Michigan lands.

An 1855 treaty provided for the dissolution of the Saginaw Chippewa tribal organization. The group reorganized under the Indian Reorganization Act of 1934 (IRA) as the "Saginaw Chippewa Indian Tribe of Michigan" with a constitution and bylaws approved May 6, 1937. A revised membership roll containing 388 names was approved by the Assistant Secretary on December 30, 1938.

The October 3, 1983, Results of Research Report identified the Saginaw Chippewa Indian Tribe of Michigan as a partial representative of the "Chippewa Nation" of the treaties of 1805, 1807, and 1817. There are a substantial number of descendants of the treaty group who should be entitled to participate in these awards but who do not qualify for membership in the IRA tribe.

In line with our Research Report we recommend that the funds be divided between (1) the Saginaw Chippewa Tribe of Michigan, and (2) the Saginaw Chippewa descendants who are not members of that Tribe, on the basis of the numbers in each group as designated on the payment roll, approved January 28, 1977, for the distribution of the Saginaw Chippewa Indians' judgment funds in Indian Claims Commission Docket 57. On that basis, we propose that 891/4134 (or 21.5530%) of the funds be apportioned to the Saginaw Chippewa Tribe. The descendant group would receive the balance through per capita distribution. The Tribe would be required to develop a proposal for the use of its apportioned share.

As the Committee knows, the Saginaw Chippewa Tribe of Michigan has objected strongly to sharing these awards with the descendancy group. While we commend the Tribes on its willingness to program a large percentage of these funds, we oppose S. 1106 because—

(1) It excludes a substantial group of those who should be beneficiaries even if the Tribe adopts any of the amendments authorized under section 4 of the bill; and

(2) The funds (including the remaining Docket 57 funds for which the 1977 Secretarial Plan authorized tribal use) would be taken out of trust without adequate justification or protection.

We opposed a bill (S. 2823) similar to S. 1106 during the 98th Congress because it was unfair to exclude a substantial number of descendants from this award and to allow a tribal entity which represents only a portion of the eligible recipients to determine the use of the money. In general, we support the concept of judgment funds being used for tribal programs. However, in this instance that approach is not fair. We are aware, however, that this Committee took a different position during the 98th Congress. Senate Report No. 98-608 on S. 2823 stated ". . . it is the intent of the Committee to limit the use of these funds to the Saginaw Chippewa Indian Tribe to the exclusion of the unorganized descendancy group." We regret that we can not agree with that position.

We recommend to the Committee the attached substitute bill which addresses our concerns.

This concludes my prepared statement. I would be happy to answer any questions the Committee may have.

[ATTACHMENT]

PROPOSED DEPARTMENTAL AMENDMENT IN THE FORM OF A SUBSTITUTE

Strike all after the enacting clause and insert in lieu thereof:

That, notwithstanding another law, the funds appropriated in Dockets 59 and 13-E before the Indian Claims Commission, and in Docket 13-F before the United States Court of Claims, to satisfy awards made to the Saginaw, Swan Creek, and Black River Bands of Chippewa Indians, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be divided, used and distributed as herein provided.

SEC. 2. The Secretary of the Interior shall divide the funds with 891/4134ths (or 21.5530 percent) to the Saginaw Chippewa Tribe of Michigan and 3243/4134ths (or 78.4470 percent) to the Saginaw Chippewa descendant group.

SEC. 3. (a) The share of the Saginaw Chippewa descendants group shall be distributed per capita by the Secretary, in amounts as equal as possible, to each person listed on a descendants payment roll which shall be prepared by the Secretary under this section. Any amount remaining after distribution shall be added to the share of the Saginaw Chippewa Indian Tribe of Michigan.

(b) Within 90 days of enactment of this Act, the Secretary shall publish notice of the descendants payment roll preparation and the deadline for filing applications in the *Federal Register* and in appropriate local media. Applications for enrollment must be filed with the Secretary within 90 days of publication of the notice in the *Federal Register*. The Secretary's initial decision on an enrollment application may be appealed under procedures prescribed by the Secretary.

(c) In preparing the descendants payment roll under this section, the Secretary shall update the descendants payment roll which was approved January 28, 1983 for use under the Secretarial Plan of November 12, 1977 for the funds in Indian Claims Commission Docket 57 as follows:

(1) by adding the names of persons living on the date of enactment of this Act who were eligible for enrollment under the 1977 Plan, but were not enrolled;

(2) by adding the names of persons living on the date of enactment of this Act who are the children of a person who was either enrolled under the 1977 Plan, or eligible to be so enrolled; and

(3) by deleting the names of persons enrolled on the 1983 roll who are not living on the date of enactment of this Act and the names of those persons who are enrolled as members of the Saginaw Chippewa Tribe of Michigan.

(d) The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed under regulations prescribed by the Secretary. The per capita shares of legal incompetents and minor shall be subject to section 3(b)(3) of the Act of Oc-

tober 19, 1983 (87 Stat. 466), as amended (96 Stat. 3512) (25 U.S.C. 1403 (b)(3)).

SEC. 4. The share of the Saginaw Chippewa Indian Tribe of Michigan shall be invested by the Secretary under existing law and may be used by the tribal governing body, on an annual budgetary basis and subject to the approval of the Secretary, for tribal programs as set out in a plan approved by the tribe on February 7, 1983, and by resolution JA-01-84 of the tribal governing body. The tribal governing body may designate part of the funds to be invested by the Secretary to yield periodic dividend payments.

SEC. 5. Amounts distributed per capita or held in trust under this Act are subject to sections 7 and 8 of the Act of October 19, 1973 (87 Stat. 468), as amended (96 Stat. 2513) (25 U.S.C. 1407 and 1408).

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